

# EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION  
VITO A. PESCE, on behalf )  
of himself and all )  
others similarly situated, )  
Plaintiffs, )  
vs. ) No. 11-cv-01379  
FIRST CREDIT SERVICES, )  
INC. d/b/a ACCOUNTS )  
RECEIVABLE TECHNOLOGIES, )  
Defendant. )

The deposition of VITO PESCE, called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Shannon R. Roberts, a notary public within and for the County of Will and State of Illinois, at 222 North LaSalle Street, Suite 300, Illinois, on July 25, 2011, at the hour of 1:24 p.m.  
Reported by: Shannon R. Roberts, CSR  
License No.: 084-004669

1	I N D E X	
2	WITNESS	EXAMINATION
3	VITO PESCE	
4	BY MR. VLAHAKIS	5
5	BY MR. KEOGH	54
6	FURTHER BY MR. VLAHAKIS	59
7		
8		
9		

10	E X H I B I T S	
11	NUMBER	MARKED FOR ID
12	PESCE Deposition Exhibit	
13	No. 1	6
14	No. 2	8
15	No. 3	10
16	No. 4	19
17	No. 5	32
18	No. 6	49
19		
20		
21		
22		
23		
24		

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1 APPEARANCES:  
2 KEOGH LAW, LTD.  
3 BY: MR. KEITH J. KEOGH  
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9  
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13 Suite 300  
14 Chicago, Illinois 60601  
15 (312) 704-3000  
16 Representing the Defendant.

1 (WHEREUPON, the witness was duly  
2 sworn.)  
3 MR. VLAHAKIS: Could you state your full name  
4 for the record, please.  
5 THE WITNESS: Vito Angelo Pesce.  
6 MR. VLAHAKIS: Mr. Pesce, have you ever given  
7 a deposition before?  
8 THE WITNESS: Yes.  
9 MR. VLAHAKIS: What case was that involving?  
10 THE WITNESS: It was a traffic accident.  
11 MR. VLAHAKIS: So it was a pretty quick  
12 deposition?  
13 THE WITNESS: Yes, very quick.  
14 MR. VLAHAKIS: I just want to lay down some  
15 ground rules. That's why I was asking.  
16 Typically, we ask that you wait until I'm done  
17 asking the question before you give your answer.  
18 That allows the court reporter to take down  
19 testimony a lot easier.  
20 Do you understand that?  
21 THE WITNESS: Uh-huh.  
22 MR. VLAHAKIS: And we need to say yes or no  
23 or verbal answers.  
24 THE WITNESS: Yes.

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1 (Pages 1 to 4)

1       MR. VLAHAKIS: If you don't understand a  
 2 question because it's either long, confusing or  
 3 it sounds like legalese, let me know and I'll  
 4 try to rephrase the question so to make sure  
 5 that when I'm asking you something, you fully  
 6 understand it before you give an answer.

7       Are you okay with that?

8       THE WITNESS: Yes.

9       MR. VLAHAKIS: If you need to take a break to  
 10 go to the bathroom, let me know, we can do that.  
 11 If you need the court reporter to read back a  
 12 prior answer, she can do that. If you want to  
 13 hear back my question, she can also do that.

14       Do you understand?

15       THE WITNESS: Yes.

16           VITO PESCE,  
 17 having been first duly sworn, was examined and  
 18 testified as follows:

19           EXAMINATION

20 BY MR. VLAHAKIS:

21       Q. I would like to ask you a few quick  
 22 questions regarding some of the settlement  
 23 offers that have been made in this case. I have  
 24 made a copy of these letters for you and for

1 later date under 408, but I have no intention to  
 2 having these published in the public record at  
 3 this time.

4       I'm just going to ask a very limited  
 5 amount of questions of you, Mr. Pesce.

6 BY MR. VLAHAKIS:

7       Q. Mr. Pesce, have you seen this document  
 8 before today's deposition?

9       A. Yes.

10       Q. Do you recall when you saw it?

11       A. I believe it was the same day it was  
 12 issued.

13       Q. And how did you receive a copy of this  
 14 letter?

15       A. Electronic.

16       Q. And if you need time to refamiliarize  
 17 yourself with the document, you can go ahead and  
 18 review it and tell me when you're done looking  
 19 it over.

20       A. I'm pretty familiar with it.

21       Q. Okay. In Paragraph 1 of this letter,  
 22 you see a statement regarding a confidential  
 23 payment to plaintiff. Do you understand that  
 24 that payment amount that's identified there was

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1 your attorney.

2       This will be Exhibit 1.

3           (WHEREUPON, PESCE Deposition  
 4           Exhibit No. 1 was marked for  
 5           identification.)

6       THE WITNESS: I would like to go to the  
 7 restroom before we start.

8       MR. VLAHAKIS: If you want to go now, that's  
 9 fine.

10       MR. KEOGH: Why don't you go now before he  
 11 asks you a question.

12       THE WITNESS: Okay.

13           (WHEREUPON, a short break was  
 14 taken.)

15       MR. KEOGH: I just want to state for the  
 16 record Exhibit 1 is a settlement letter.  
 17 Pursuant to Rule 408, any settlement discussions  
 18 is non-discoverable and won't lead to relevant  
 19 information. With that general objection to any  
 20 questions regarding this, you can ask your  
 21 questions.

22       MR. VLAHAKIS: Fair enough. I agree with the  
 23 concept that these would be arguably  
 24 confidential. The scope might be decided at a

1 an offer that my client made to you to settle  
 2 your TCPA claims?

3       A. I understand.

4       Q. And am I correct that you rejected that  
 5 settlement overture that's contained in  
 6 Paragraph 1 of this July 18, 2011 letter?

7       A. Yes.

8       Q. Without revealing any attorney/client  
 9 privilege communications you had with your  
 10 attorney, could you explain to me why you  
 11 rejected the settlement figure that's identified  
 12 in Paragraph 1 of the July 18, 2011 letter?

13       A. Well, it's a class case. It's not  
 14 about me individually.

15       Q. Anything else other than that?

16       A. That's pretty much it.

17       Q. I'd like to show you copies of an  
 18 exhibit marked as 2.

19           (WHEREUPON, PESCE Deposition  
 20           Exhibit No. 2 was marked for  
 21           identification.)

22       MR. KEOGH: For the record Exhibit 2 is also  
 23 a settlement letter and I will object pursuant  
 24 to 408. I don't think it's relevant -- related

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1 answer today to the various questions I asked  
 2 you where it seemed like your answer was you  
 3 don't recall?  
 4 A. Just maybe being a little more cautious  
 5 in my answering.  
 6 Q. Did you review your notes in  
 7 preparation for today's deposition?  
 8 A. I did.  
 9 Q. Did you bring them with you at all?  
 10 A. No, I did not.  
 11 Q. But your attorney does have copies of  
 12 them?  
 13 A. Yes.  
 14 Q. Is your more accurate answer today that  
 15 you don't recall or do you believe that your  
 16 answer in Paragraph 13 that you never provided  
 17 your cell phone number is the more accurate  
 18 answer?  
 19 A. I believe I never provided my cell  
 20 phone number.  
 21 Q. Did you specifically review your notes  
 22 today to determine whether or not there's a  
 23 mention in your notes regarding your cell phone?  
 24 A. I did not review my notes today.

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1 A. Correct.  
 2 Q. And you understand the power of an auto  
 3 dialer or preemptive dialer and how often they  
 4 can reach a person?  
 5 A. Correct.  
 6 Q. Now, counsel showed you a collection of  
 7 notes from his client as Exhibit 3. Can you  
 8 grab those, please? Can you turn to the second  
 9 page? He asked you a variety of questions  
 10 regarding the -- a March 9 and March 16 entry,  
 11 correct?  
 12 A. Correct.  
 13 Q. And I believe you testified you weren't  
 14 sure about the dates, but you did speak to them  
 15 a couple times, correct?  
 16 A. Correct.  
 17 Q. One, a Lisa Henry at least once; is  
 18 that correct?  
 19 A. Correct.  
 20 Q. Now, putting aside the dates, take a  
 21 look at the March 9 entry. Is it true that  
 22 you're asking for written verification of the  
 23 debt?  
 24 A. Yes.

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1 MR. VLAHAKIS: I think I'm almost done, but  
 2 there's one document I want to look at that  
 3 I didn't bring down.  
 4 If we can take five minutes?  
 5 MR. KEOGH: Sure.  
 6 (WHEREUPON, a short break was  
 7 taken.)  
 8 MR. VLAHAKIS: I'm done. Go ahead.  
 9 EXAMINATION  
 10 BY MR. KEOGH:  
 11 Q. Mr. Pesce, counsel asked you what you  
 12 do for a living. You said IT management. Can  
 13 you elaborate, please?  
 14 A. Data center management, telephony  
 15 oversight, databases, software.  
 16 Q. For what company?  
 17 A. CNA Insurance.  
 18 Q. And as part of that oversight for  
 19 database management and telephony, do you have  
 20 any experience dealing with preemptive dialers  
 21 or auto dialers?  
 22 A. I'm familiar with them.  
 23 Q. You're familiar with them as part of  
 24 your employment?

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1 Q. Is there any mention of you asking them  
 2 to call back your cell phone?  
 3 A. No.  
 4 Q. What are you asking for according to  
 5 these notes?  
 6 A. I wanted the physical proof that I owed  
 7 the debt.  
 8 Q. Would a call back been good enough for  
 9 you?  
 10 A. No.  
 11 Q. According to these notes, you called  
 12 back again on March 16; is that correct?  
 13 A. Correct.  
 14 Q. And it's correct not as to the date,  
 15 but as to the fact that you did call back?  
 16 A. Yes.  
 17 Q. And, once again, what did you ask for  
 18 on that second call?  
 19 A. Documents proving that I owed the debt.  
 20 Q. And if they called you back saying we  
 21 checked, you owed a debt, would that have been  
 22 good enough?  
 23 A. No, it would not.  
 24 Q. Is there any reason at this point for

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1 you to provide Fair [sic] Credit Services your  
 2 cell phone number?  
 3 A. No.  
 4 Q. And did you provide Fair [sic] Credit  
 5 Services your cell phone number?  
 6 MR. VLAHAKIS: Objection, asked and answered.  
 7 THE WITNESS: No. They obviously had it if  
 8 you look at the notes.  
 9 BY MR. KEOGH:  
 10 Q. And you said they obviously had it. If  
 11 you turn to the first page of Exhibit 3, it  
 12 shows a phone call to (847) 809-9705; is that  
 13 correct?  
 14 A. Yes.  
 15 Q. And that's -- there's a date of  
 16 March 3; is that correct, on that circled entry  
 17 showing the call?  
 18 A. March 1.  
 19 Q. Sorry. Thank you.  
 20 In that group exhibit, which I believe  
 21 is Exhibit 5, counsel asked you to look at two  
 22 letters that you wrote Nuvell; do you recall  
 23 those questions?  
 24 A. Yes.

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1 paid Saab Financial. So I wanted hard-copy  
 2 proof that I owed the debt and you owned the  
 3 debt.  
 4 Q. You said you don't give out your cell  
 5 phone willy-nilly. What do you mean by that?  
 6 A. I'm cautious on it. It's even on the  
 7 Federal Do-not-call list.  
 8 Q. I believe you testified that you  
 9 reviewed the complaint in this case before it  
 10 was filed, correct?  
 11 A. Correct.  
 12 Q. Did you have access to your notes when  
 13 you were reviewing this complaint?  
 14 A. Yes.  
 15 MR. KEOGH: I have no further questions for  
 16 the witness.  
 17 FURTHER EXAMINATION  
 18 BY MR. VLAHAKIS:  
 19 Q. Mr. Pesce, do you have an understanding  
 20 of what the -- the amount of statutory damages  
 21 that the TCPA provides for each call to a cell  
 22 phone in violation of the TCPA?  
 23 MR. KEOGH: Objection, outside the scope of  
 24 cross. You can answer.

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1 Q. I'm going to hand you those two letters  
 2 dated March 1, 2010, and March 17, 2010. Would  
 3 you take a second to look at those documents?  
 4 A. Okay.  
 5 Q. Now, what are those documents  
 6 requesting?  
 7 A. Proof.  
 8 Q. Proof of what?  
 9 A. Proof that I owed the debt.  
 10 Q. And you're asking Nuvell to send you  
 11 proof, correct?  
 12 A. Correct.  
 13 Q. Did you provide any phone numbers on  
 14 those letters?  
 15 A. No, I did not.  
 16 Q. Why not?  
 17 A. Well, I wanted hard-copy proof, and  
 18 I don't just give out my cell phone willy-nilly.  
 19 But I basically wanted hard-copy proof that  
 20 I owed this debt and that Nuvell -- I never  
 21 heard of Nuvell. I don't even know who that  
 22 company is. Even today they're supposedly not  
 23 even a company anymore, so I still don't know  
 24 who Nuvell is. I never paid Nuvell. I always

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1 THE WITNESS: I believe I seen some numbers,  
 2 but not --  
 3 BY MR. VLAHAKIS:  
 4 Q. Do you recall what number those may  
 5 have been?  
 6 A. I don't recall.  
 7 Q. Does \$500 per violation ring a bell?  
 8 A. That could be.  
 9 Q. Do you have any understanding as to  
 10 whether damages can be trebled under the TCPA to  
 11 \$1500 per call?  
 12 A. I'm not a hundred percent familiar with  
 13 the law.  
 14 Q. If you have an understanding that the  
 15 TCPA can award \$500 per call, do you have an  
 16 understanding of what your maximum recovery  
 17 could be at the end of the case based on the  
 18 amount of calls to your cell phone?  
 19 A. Generally.  
 20 Q. What's your general understanding?  
 21 A. Anywhere between -- I don't even know.  
 22 Again, I said it's not about me. I don't care  
 23 about what numbers I get individually.  
 24 Q. So is it your understanding in terms of

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